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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/765,491	01/18/2001	Jack L. Arbiser	EU 98055 CON	8772

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EXAMINER

KIM, JENNIFER M

ART UNIT PAPER NUMBER

1617

DATE MAILED: 08/13/2002 10

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/765,491

Applicant(s)

ARBISER, JACK L.

Examiner

Jennifer Kim

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 21 March 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 4-6, 10-12, 17 and 18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10-12 and 18 is/are allowed.
- 6) ☒ Claim(s) 4-6 and 17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

Applicant's arguments with respect to claims 4-6 and 17 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term "like" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4-6 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sukhatme (WO 99/29878), Doland's Medical Dictionary, 1994, Galardy (U.S. Patent 5,696,147), O'Reilly et al. (U.S. Patent 5,733,876) of record.

With regard to claims 4-6 and 17, Sukhatme on the abstract, page 3, line 25, page 12, lines 27-30, page 25, lines 13-20, and page 28, lines 11-15, teaches Applicant's angiogenesis inhibitors (**endostatin**, **angiostatin**) useful in treatment of the angiogenesis mediated diseases **hemangiomas**, **neurofibromas** and **pyrogenic granulomas** in topical application.

Doland's Medical Dictionary teaches under "hemangioma" on page 740, that hemangioma occur most commonly in childhood.

The difference between above reference and Applicant's claimed invention is treatment of hemangiomas in childhood. However, it would have been prima facie obvious to skilled artisan to employ well known angiogenesis inhibitors such as endostatin and angiostatin for treatment of hemangiomas in a childhood since Sukhatme teaches endostatin and angiostatin are useful in treatment of hemangioma which occur most commonly in childhood.

With regard to claims 1-6, O'Reilly et al. on column 5, lines 15-20, column 9 line 65 through column 10, line 7 and line 65-67, teach Applicant's angiogenesis inhibitor, **angiostatin**, useful topically in treatment of an angiogenesis mediated disease including **neurofibromas**.

Doland's Medical Dictionary teaches under "neurofibromatosis" on page 1129, that neurofibromatosis is a condition of having multiple neurofibromas.

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The difference between above reference and Applicant's claimed invention is treatment of neurofibromatosis. However, the skilled artisan would have been obvious to skilled artisan to employ Applicant's active agent in treatment of neurofibromatosis since they related to same disease condition.

With regard to claims 4 and 5, Galardy, on column 13, lines 10-11, line 61, and column 14, lines 5-6, teaches Applicant's angiogenesis inhibitor, metalloproteases inhibitor, useful in treatment of epidermolysis bullosa by topical administration.

The difference between above reference and Applicant's claimed invention is treatment of specified epidermolysis bullosa. However, it would have been obvious to skilled artisan to employ Applicant's active agent in treatment of specified epidermolysis bullosa, recessive dystrophic epidermolysis since Galardy teaches treatment of epidermolysis bullosa in general.

For these reasons the claimed subject matter is deemed to fail to patentably distinguish over the state of the art as represented by the cited references. The claims are therefore properly rejected under 35 U.S.C. 103.


***Allowable Subject Matter***

Claims 10-12 and 18 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer Kim whose telephone number is 703-308-2232. The examiner can normally be reached on Monday through Friday 8:30am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Minna Moezie can be reached on 703-308-4612. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4556 for regular communications and 703-308-4556 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1235.

  
Theodore J. Criares  
Primary Examiner  
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